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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,050	03/22/2004	James E. Kipp	IFT-6019	1570

7590 02/27/2006

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EXAMINER

KUGEL, TIMOTHY J

ART UNIT	PAPER NUMBER
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1712

DATE MAILED: 02/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/806,050

Applicant(s)

KIPP ET AL.

Examiner

Timothy J. Kugel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 February 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/3/06.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

### **DETAILED ACTION**

1. Claims 1-7 are pending as amended on 3 February 2006, Claim 8 being cancelled.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Election/Restrictions***

3. The cancellation of claim 8, drawn to the provisionally non-elected invention of the previous Office action, is taken as affirmation of the provisional election made during the telephone conversation with Michael Mayo on 20 August 2005 and detailed in the previous Office action.

### ***Oath/Declaration***

4. Applicant's oath or declaration, filed 3 February 2006, has been fully considered and are corrective.

The objection to the oath or declaration has been withdrawn.

### ***Drawings***

5. Applicant's amendment, filed 3 February 2006, with respect to the replacement drawing sheets has been fully considered and are corrective.

The objection to the drawings has been withdrawn.

### ***Specification***

6. Applicant's amendment, filed 3 February 2006, with respect to the correction of trade names has been fully considered and are corrective.

The objection to the specification has been withdrawn.

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7. Applicant is reminded that the incorporation of essential material in the specification by reference to an unpublished U.S. application, foreign application or patent, or to a publication is improper. Applicant is required to amend the disclosure to include the material incorporated by reference, if the material is relied upon to overcome any objection, rejection, or other requirement imposed by the Office. The amendment must be accompanied by a statement executed by the applicant, or a practitioner representing the applicant, stating that the material being inserted is the material previously incorporated by reference and that the amendment contains no new matter. 37 CFR 1.57(f).

8. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

#### ***Claim Objections***

9. Applicant's amendment, filed 3 February 2006, with respect to the correction of minor informalities in the claims has been fully considered and are corrective.

The objection to claim 7 has been withdrawn.

#### ***Claim Rejections - 35 USC § 112***

10. Applicant's amendment, filed 3 February 2006, with respect to the amendment to claim 7 removing the phrase "of the solvent" has been fully considered and is corrective.

The rejection of claim 7 under 35 USC 112 2<sup>nd</sup> paragraph has been withdrawn.

11. The rejection of claims 1-6 under 35 USC 112 2<sup>nd</sup> paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter that applicant regards as the invention is maintained. Applicant's arguments filed 3 February 2006 have been fully considered but they are not persuasive.

Applicant argues that the words of the claims are clear on their face and that no ambiguity exists; however, the limitations "mixing of at least some of the particles in the first and second streams," in claims 1, 2 and 5; and the limitation "mixing of at least some of the particles in the first stream," in claim 3, are unclear for the reasons of record.

12. Amended claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As amended, claim 1 recites the limitation "redirecting the fluid". There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102 and 35 USC § 103***

13. The rejection of claims 1-4 under 35 USC 102(b) as being anticipated by US Patent 6,221,332 (Thumm hereinafter), of claims 5 and 7 under 35 USC 102(b) as being anticipated by US Patent 5,314,506 (Midler hereinafter), of claims 5-7 under 35 USC 103(a) as being unpatentable over Emulsifying Cell Operating Manual, Best Emulsifying Equipment International, Midgdal Haemek, Isreal (BEEI hereinafter) in view of Midler and of claims 5-7 as being unpatentable over Midler in view of US Patent 3,685,261 (McIlvaine hereinafter) are maintained. Applicant's arguments filed 3 January 2006 have been fully considered but they are not persuasive.

Applicant argues that the amendment including the limitation redirecting the fluid stream in claims 1 and 5 and including the limitation altering the flow path in claim 3 differentiate the claims from Thumm and Midler; and that neither Thumm nor Midler teach shearing between the streams or mixing of particles in the first and second streams; however, Thumm shows the fluid streams being redirected as they round the corners of the flow channels and meet in the combined channel (121) as shown in Figures 2A, 2B and 2C—this redirection and meeting of the streams would necessarily cause shearing between and mixing within the streams. Further, the impinging fluid streams taught by Midler would also necessarily cause shearing between and mixing within the streams.

Applicant further argues that there would be no motivation to combine the teachings of BEEI with Midler as Midler does not teach shearing; however the impinging fluid streams taught by Midler would also necessarily cause shearing between and mixing within the streams.

Applicant finally argues that McIlvaine is not analogous art. It has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, McIlvaine discloses a method and apparatus for dispersing two fluids including a Venturi, which is certainly pertinent to the particular problem of the mixing of fluid streams.

***Conclusion***

14. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy J. Kugel whose telephone number is (571) 272-1460. The examiner can normally be reached 6:00 AM – 4:30 PM Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy Gulakowski can be reached on (571) 272-1302. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR.

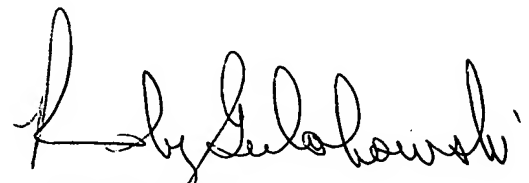
Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

TJK  
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A handwritten signature in black ink, appearing to read 'Randy Gulakowski', with a stylized, cursive script.

RANDY GULAKOWSKI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700